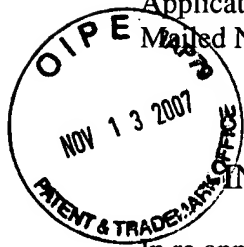


Application No. 09/748,708
Application For Patent Term Adjustment
Mailed November 6, 2007



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Saldana et al.

Application No. 09/748,708

Filed: December 22, 2000

For: POLISHING APPARATUS AND
METHODS HAVING HIGH PROCESSING
WORKLOAD FOR CONTROLLING
POLISHING PRESSURE APPLIED BY
POLISHING HEAD

Docket No: LAM2P222A

Group Art Unit: 3728

Examiner: Ackun, Jacob K.

Date: November 6, 2007

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail addressed to: Commissioner for Patents, Alexandria, VA 22313-1450, on November 6, 2007.

Kay Harlow

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705 (b)

Mail Stop Issue Fee,
Assistant Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

Pursuant to 37 CFR 1.705 (b), Applicants hereby file this application for patent term adjustment, and request reconsideration of the patent term adjustment indicated in the Notice of Allowance, which was zero days applicable to the date of the Notice and applicable if the issue fee is timely paid.

To provide focus for the review of this application for patent term adjustment, the following review is provided. Applicants timely filed a Reply to a first Action (date filed = 9/13/02). Applicants submit below that the Office erred in using a date of 4/9/07 as the filing date of the Reply (see Second Action mailed 7/11/07). The 4/9/07 date was the date on which the Office received the last of many requests by Applicants to revive the Application, many

7/11/07). The basis for this adjustment is the time after expiration of the four months until the mailing date of the next Action, namely: from 1/14/03 to 7/11/07, or 1460 days.

Based on 1.702(b) {Late Issuance}: The Application will not issue within three years after the date on which the Application was filed under 35 U.S.C. 111(a). The basis for this adjustment is the time after expiration of the three years and one day after the filing date (i.e., 12/23/03) until the issue date (unknown), including 1872 days to 11/6/07, plus the time (unknown) until the issue date.

2. Statement of Facts:

- (ii) The relevant dates as specified in 37 CFR 1.703 (a)-(e) for which an adjustment is sought are as follows (Section A), including the adjustment as specified in the section of 37 CFR 703(f) to which the patent is entitled. The adjustments under the sections of 37 CFR 703(f) are summed in Section B.

Section A: The relevant dates as specified in 37 CFR 1.703 (a)-(e); and for each applicable one of Sections (a) – (e), the adjustment specified in 1.703(f) to which the patent is entitled:

Relevant to 37 CFR 1.703(a)(1):

The Application was filed under 35 USC 111(a): 12/22/00.

A first Action under 35 USC 132 was mailed 6/20/02.

Fourteen months after 12/22/00 is 2/22/02.

Adjustment 1: The time after expiration of the fourteen months until the mailing date of the first Action is dated from 2/23/02 to 6/20/02, or 117 days. This does not overlap another period of adjustment.

Relevant to 37 CFR 1.703(a)(2):

A Reply was filed 9/13/02 under 35 USC 111(a) to the first Action (mailed 6/20/02).

Note 1: A post card receipt for the 9/13/02 filing was accepted as part of review by the Office of a Petition filed 2/10/03 To Revive Application, and a post card receipt for the Petition filed

prior filings having been lost by the Office. The copy of the Reply having a filing date of 4/9/07 was the filing of the Reply as an Exhibit to the papers filed seeking to revive the Application. Thus, the copy of the Reply filed as part of a further Request for Consideration of Original petition became the basis for the reference in the Second Action that the Reply had been "filed" on 4/9/07. Apparently, but unknown to Applicants, for patent term adjustment, the Office chose to treat 4/9/07 as the "filing date" of the Reply to which the Second Action (mailed 7/11/07) was responsive. The selection of the 4/9/07 date of "filing" of the Reply is (a) asserted below as being erroneous, (b) submitted below as not being a "filing" of the Reply within the scope of 37 CFR 1.702 (a) (2), and (c) the source of a significant shortening of the proper patent term. The patent term adjustment in the Notice of Allowance also does not provide any term adjustment based on 37 CFR 1.702(b), which in view of the 6+ year pendency and the facts recited below, is also believed to be in error.

As required by 37 CFR 1.705 (b), this application includes the following:

1. The \$200.00 fee set forth in 37 CFR Section 1.18(e) is included in the enclosed check number 19173. If there is any deficiency in the required fee, the Commissioner is authorized to charge such deficiency to Deposit Account No. 50-0805 (Order No. LAM2P222A).

2. Statement of Facts:

- (i) The correct patent term adjustment is believed to be 1727 days plus the time (now unknown) from the date of this paper until the date of issuance. The bases under 37 CFR 1.702 for the adjustment are as follows:

Based on 37 CFR 1.702(a)(1){Late First Action}: The mailing date of the first Action was more than fourteen months after the filing date of the Application. The basis for this adjustment is the time after expiration of the fourteen months until the mailing date of the Action, namely: 2/23/02 to 6/20/02, or 117 days.

Based on 1.702(a)(2){Late Second Action}: The Reply (filed 9/13/02) responding to the Action mailed 6/20/02 was not responded to until more than four months after 9/13/02 (namely, the Second Action was mailed

2/10/03 was also accepted as part of review by the Office of a further Request for Consideration of Original petition, filed on 4/5/07. The Reply and the Petition were apparently lost by the Office after the original post cards were mailed to Applicants. The further Request, filed on 4/5/07, was received by Office and receipt of the Request was acknowledged by a post card dated 4/9/07. The further Request was entered as a Petition on 4/9/07. The granting of the Petition (via the further Request) was mailed 5/7/07, thus the filing of the Reply on 9/13/02 was acknowledged.

Four months after the filing on 9/13/02 of the Reply under 35 USC 111(a) is 1/13/03.

A Second Action under 35 USC 132 responsive to the Reply filed 9/13/02 was mailed 7/11/07.

Note 2: The Second Action referenced the last date (4/9/07) on which the Reply was "filed". It is respectfully submitted that the alleged "filing" on 4/9/07 was not a "filing" of the Reply within the scope of 37 CFR 1.702 (a) (2). Rather, the date of 4/9/07 was a submittal of the Reply as an Exhibit to the further Request (that was entered as a Petition on 4/9/07). It is respectfully submitted that the proper "date on which the reply was filed" as used in 37 CFR 1.702 (a) (2), is the date on which the granting of the Petition was based, and that date was the date of 9/13/02 shown on the post card stamped by the Office as the filing date of the Reply. The date of the Reply should have been no later than the date indicated by the post card receipt, namely 9/13/02, if not the mailing date of 9/10/02 of the Reply. Applicants respectfully request that the 9/13/02 date be used for purposes of this application for patent term adjustment, e.g., with respect to 37 CFR 1.703(a)(2).

Note 3: The reason that the Reply filed 9/13/02 was found non-compliant (as of the year 2007) is that the Rules have changed in the four + year period after the original Reply was filed. Applicants timely

filed a revised Reply on 9/8/07, within the time period set in the Second Action.

Adjustment 2: Non-Overlap Portion of the Period Based on 1.703(a)(2) {Late Second Action}: Expiration of the four months after the mailing of the Reply is: (9/13/02 + four months = 1/14/03). From that expiration, until the start of the 37 CFR 1.703(b) {Late Second Action} period, there is no overlap with another period. The 37 CFR 1.703(b) period starts 12/23/03. The non-overlapping period is from 1/14/03 to 12/22/03, or 342 days.

Relevant to 1.703(b):

The Application was filed under 35 USC 111(a): 12/22/00.

Three years after the 12/22/00 filing date of the Application under 35 USC 111(a) is 12/22/03.

The 37 CFR 1.703(b) date extends from 12/23/03 to the issue date.

Adjustment 3: Non-Overlap Portion of the Period Based on 37 CFR 1.703(b) {Late Issuance}: A portion of the 37 CFR 1.703(b) {Late Issuance} period extends after expiration of the 37 CFR 1.703(a)(2) {Late Second Action} period. The 37 CFR 1.703(b) {Late Issuance} period extends after 7/11/07 (which is the expiration of the 37 CFR 1.703(a)(2) {Late Second Action} period). The non-overlapping period is presently unknown, and extends from 7/12/07 to the issue date.

Adjustment 4: Overlap Portion of (I) the Period Based on 37 CFR 1.703(a)(2) {Late Second Action} and (II) the Period Based On 37 CFR 1.703(b) {Late Issuance}: This overlap is to be counted once as part of the adjustment, and is as follows. The entire 37 CFR 1.703(a)(2) period [(1/14/03 to 7/11/07)] compares to the entire 37 CFR 1.703(b) period [(12/23/03) to 11/6/07, plus the time (unknown) until the issue date]. The one overlap period for the adjustment is from the start of the overlap on 12/23/03 until the end of the overlap [end of

Late Second Action period under 37 CFR 1.703(a) (2), which is 7/11/07]. This portion is 1295 days.

Section B. The adjustments under the above-noted sections of 37 CFR 703(f) are summed as follows.

1. Based on 37 CFR 1.703(a)(1): 117 days. This does not overlap another period of adjustment.
2. Non-Overlap Portion of the Period Based on 1.703(a)(2) {Late Second Action}: 342 days. This does not overlap another period of adjustment.
3. Non-Overlap Portion of the Period Based on 37 CFR 1.703(b) {Late Issuance}: The non-overlapping period is presently unknown, and extends from 7/12/07 to the issue date. This does not overlap another period of adjustment.
4. Overlap Portion of (I) the Period Based on 37 CFR 1.703(a)(2) {Late Second Action} and (II) the Period Based On 37 CFR 1.703(b) {Late Issuance}: This overlap is counted once, and is 1295 days.

Summation of Adjustments Specified in 37 CFR 1.703(f) To Which The Patent Is Entitled:

117 days + 342 days + 1295 days = 1754 days, plus unknown period from 7/12/07 to the issue date.

(iii) The application is not subject to a Terminal Disclaimer.

(iv) (A) Under 37 CFR 1.704 (c), the following circumstances during prosecution are noted:

A date of unintentional abandonment of the application was October 8, 2001.

A date of mailing of decision granting petition to revive was May 1, 2002.

A date of that is four months after the date (November 1, 2001) of a grantable petition to revive the application was March 1, 2002.

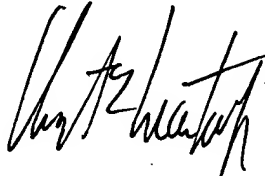
The period by which the adjustment identified above in the Summation of Adjustments is to be reduced is from 10/8/01 to 3/1/02, or 144 days.

Application No. 09/748,708
Application For Patent Term Adjustment
Mailed November 6, 2007

In view of the above Statement and the enclosure of the applicable fee, Applicants respectfully request (1) reconsideration of the patent term adjustment indicated in the Notice of Allowance, and (2) adjustment of the patent term as indicated in the above Summation of Adjustments, less 144 days.

Respectfully submitted,

MARTINE PENILLA & GENCARELLA L.L.P.

A handwritten signature in black ink, appearing to read 'Chester E. Martine, Jr.', is written over the printed name.

Chester E. Martine, Jr.

Reg. No. 19, 711

710 Lakeway Drive, Suite 200
Sunnyvale, California 94085
(408) 774-6908
Customer Number 25920

Application No. 09/748,708
Application For Patent Term Adjustment
Mailed November 6, 2007



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)	
)	
Saldana et al.)	Docket No: LAM2P222A
)	
Application No. 09/748,708)	Group Art Unit: 3728
)	
Filed: December 22, 2000)	Examiner: Ackun, Jacob K.
)	
For: POLISHING APPARATUS AND)	Date: November 6, 2007
METHODS HAVING HIGH PROCESSING)	
WORKLOAD FOR CONTROLLING)	
POLISHING PRESSURE APPLIED BY)	
POLISHING HEAD)	

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail addressed to: Commissioner for Patents, Alexandria, VA 22313-1450, on November 6, 2007.

Kay Harlow

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705 (b)

Mail Stop Issue Fee,
Assistant Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

Pursuant to 37 CFR 1.705 (b), Applicants hereby file this application for patent term adjustment, and request reconsideration of the patent term adjustment indicated in the Notice of Allowance, which was zero days applicable to the date of the Notice and applicable if the issue fee is timely paid.

To provide focus for the review of this application for patent term adjustment, the following review is provided. Applicants timely filed a Reply to a first Action (date filed = 9/13/02). Applicants submit below that the Office erred in using a date of 4/9/07 as the filing date of the Reply (see Second Action mailed 7/11/07). The 4/9/07 date was the date on which the Office received the last of many requests by Applicants to revive the Application, many

prior filings having been lost by the Office. The copy of the Reply having a filing date of 4/9/07 was the filing of the Reply as an Exhibit to the papers filed seeking to revive the Application. Thus, the copy of the Reply filed as part of a further Request for Consideration of Original petition became the basis for the reference in the Second Action that the Reply had been "filed" on 4/9/07. Apparently, but unknown to Applicants, for patent term adjustment, the Office chose to treat 4/9/07 as the "filing date" of the Reply to which the Second Action (mailed 7/11/07) was responsive. The selection of the 4/9/07 date of "filing" of the Reply is (a) asserted below as being erroneous, (b) submitted below as not being a "filing" of the Reply within the scope of 37 CFR 1.702 (a) (2), and (c) the source of a significant shortening of the proper patent term. The patent term adjustment in the Notice of Allowance also does not provide any term adjustment based on 37 CFR 1.702(b), which in view of the 6+ year pendency and the facts recited below, is also believed to be in error.

As required by 37 CFR 1.705 (b), this application includes the following:

1. The \$200.00 fee set forth in 37 CFR Section 1.18(e) is included in the enclosed check number 19173. If there is any deficiency in the required fee, the Commissioner is authorized to charge such deficiency to Deposit Account No. 50-0805 (Order No. LAM2P222A).

2. Statement of Facts:

- (i) The correct patent term adjustment is believed to be 1727 days plus the time (now unknown) from the date of this paper until the date of issuance. The bases under 37 CFR 1.702 for the adjustment are as follows:

Based on 37 CFR 1.702(a)(1){Late First Action}: The mailing date of the first Action was more than fourteen months after the filing date of the Application. The basis for this adjustment is the time after expiration of the fourteen months until the mailing date of the Action, namely: 2/23/02 to 6/20/02, or 117 days.

Based on 1.702(a)(2){Late Second Action}: The Reply (filed 9/13/02) responding to the Action mailed 6/20/02 was not responded to until more than four months after 9/13/02 (namely, the Second Action was mailed

7/11/07). The basis for this adjustment is the time after expiration of the four months until the mailing date of the next Action, namely: from 1/14/03 to 7/11/07, or 1460 days.

Based on 1.702(b) {Late Issuance}: The Application will not issue within three years after the date on which the Application was filed under 35 U.S.C. 111(a). The basis for this adjustment is the time after expiration of the three years and one day after the filing date (i.e., 12/23/03) until the issue date (unknown), including 1872 days to 11/6/07, plus the time (unknown) until the issue date.

2. Statement of Facts:

- (ii) The relevant dates as specified in 37 CFR 1.703 (a)-(e) for which an adjustment is sought are as follows (Section A), including the adjustment as specified in the section of 37 CFR 703(f) to which the patent is entitled. The adjustments under the sections of 37 CFR 703(f) are summed in Section B.

Section A: The relevant dates as specified in 37 CFR 1.703 (a)-(e); and for each applicable one of Sections (a) – (e), the adjustment specified in 1.703(f) to which the patent is entitled:

Relevant to 37 CFR 1.703(a)(1):

The Application was filed under 35 USC 111(a): 12/22/00.

A first Action under 35 USC 132 was mailed 6/20/02.

Fourteen months after 12/22/00 is 2/22/02.

Adjustment 1: The time after expiration of the fourteen months until the mailing date of the first Action is dated from 2/23/02 to 6/20/02, or 117 days. This does not overlap another period of adjustment.

Relevant to 37 CFR 1.703(a)(2):

A Reply was filed 9/13/02 under 35 USC 111(a) to the first Action (mailed 6/20/02).

Note 1: A post card receipt for the 9/13/02 filing was accepted as part of review by the Office of a Petition filed 2/10/03 To Revive Application, and a post card receipt for the Petition filed

2/10/03 was also accepted as part of review by the Office of a further Request for Consideration of Original petition, filed on 4/5/07. The Reply and the Petition were apparently lost by the Office after the original post cards were mailed to Applicants. The further Request, filed on 4/5/07, was received by Office and receipt of the Request was acknowledged by a post card dated 4/9/07. The further Request was entered as a Petition on 4/9/07. The granting of the Petition (via the further Request) was mailed 5/7/07, thus the filing of the Reply on 9/13/02 was acknowledged.

Four months after the filing on 9/13/02 of the Reply under 35 USC 111(a) is 1/13/03.

A Second Action under 35 USC 132 responsive to the Reply filed 9/13/02 was mailed 7/11/07.

Note 2: The Second Action referenced the last date (4/9/07) on which the Reply was "filed". It is respectfully submitted that the alleged "filing" on 4/9/07 was not a "filing" of the Reply within the scope of 37 CFR 1.702 (a) (2). Rather, the date of 4/9/07 was a submittal of the Reply as an Exhibit to the further Request (that was entered as a Petition on 4/9/07). It is respectfully submitted that the proper "date on which the reply was filed" as used in 37 CFR 1.702 (a) (2), is the date on which the granting of the Petition was based, and that date was the date of 9/13/02 shown on the post card stamped by the Office as the filing date of the Reply. The date of the Reply should have been no later than the date indicated by the post card receipt, namely 9/13/02, if not the mailing date of 9/10/02 of the Reply. Applicants respectfully request that the 9/13/02 date be used for purposes of this application for patent term adjustment, e.g., with respect to 37 CFR 1.703(a)(2).

Note 3: The reason that the Reply filed 9/13/02 was found non-compliant (as of the year 2007) is that the Rules have changed in the four + year period after the original Reply was filed. Applicants timely

filed a revised Reply on 9/8/07, within the time period set in the Second Action.

Adjustment 2: Non-Overlap Portion of the Period Based on 1.703(a)(2) {Late Second Action}: Expiration of the four months after the mailing of the Reply is: (9/13/02 + four months = 1/14/03). From that expiration, until the start of the 37 CFR 1.703(b) {Late Second Action} period, there is no overlap with another period. The 37 CFR 1.703(b) period starts 12/23/03. The non-overlapping period is from 1/14/03 to 12/22/03, or 342 days.

Relevant to 1.703(b):

The Application was filed under 35 USC 111(a): 12/22/00.

Three years after the 12/22/00 filing date of the Application under 35 USC 111(a) is 12/22/03.

The 37 CFR 1.703(b) date extends from 12/23/03 to the issue date.

Adjustment 3: Non-Overlap Portion of the Period Based on 37 CFR 1.703(b) {Late Issuance}: A portion of the 37 CFR 1.703(b) {Late Issuance} period extends after expiration of the 37 CFR 1.703(a)(2) {Late Second Action} period. The 37 CFR 1.703(b) {Late Issuance} period extends after 7/11/07 (which is the expiration of the 37 CFR 1.703(a)(2) {Late Second Action} period). The non-overlapping period is presently unknown, and extends from 7/12/07 to the issue date.

Adjustment 4: Overlap Portion of (I) the Period Based on 37 CFR 1.703(a)(2) {Late Second Action} and (II) the Period Based On 37 CFR 1.703(b) {Late Issuance}: This overlap is to be counted once as part of the adjustment, and is as follows. The entire 37 CFR 1.703(a)(2) period [(1/14/03 to 7/11/07)] compares to the entire 37 CFR 1.703(b) period [(12/23/03) to 11/6/07, plus the time (unknown) until the issue date]. The one overlap period for the adjustment is from the start of the overlap on 12/23/03 until the end of the overlap [end of

Late Second Action period under 37 CFR 1.703(a) (2), which is 7/11/07]. This portion is 1295 days.

Section B. The adjustments under the above-noted sections of 37 CFR 703(f) are summed as follows.

1. Based on 37 CFR 1.703(a)(1): 117 days. This does not overlap another period of adjustment.

2. Non-Overlap Portion of the Period Based on 1.703(a)(2) {Late Second Action}: 342 days. This does not overlap another period of adjustment.

3. Non-Overlap Portion of the Period Based on 37 CFR 1.703(b) {Late Issuance}: The non-overlapping period is presently unknown, and extends from 7/12/07 to the issue date. This does not overlap another period of adjustment.

4. Overlap Portion of (I) the Period Based on 37 CFR 1.703(a)(2) {Late Second Action} and (II) the Period Based On 37 CFR 1.703(b) {Late Issuance}: This overlap is counted once, and is 1295 days.

Summation of Adjustments Specified in 37 CFR 1.703(f) To Which The Patent Is Entitled:

117 days + 342 days + 1295 days = 1754 days, plus unknown period from 7/12/07 to the issue date.

(iii) The application is not subject to a Terminal Disclaimer.

(iv) (A) Under 37 CFR 1.704 (c), the following circumstances during prosecution are noted:

A date of unintentional abandonment of the application was October 8, 2001.

A date of mailing of decision granting petition to revive was May 1, 2002.

A date of that is four months after the date (November 1, 2001) of a grantable petition to revive the application was March 1, 2002.

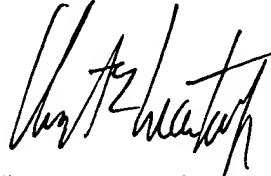
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In view of the above Statement and the enclosure of the applicable fee, Applicants respectfully request (1) reconsideration of the patent term adjustment indicated in the Notice of Allowance, and (2) adjustment of the patent term as indicated in the above Summation of Adjustments, less 144 days.

Respectfully submitted,

MARTINE PENILLA & GENCARELLA L.L.P.

A handwritten signature in black ink, appearing to read "Chester E. Martine, Jr.", written in a cursive style.

Chester E. Martine, Jr.

Reg. No. 19, 711

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